



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND ETHICS COMMISSION

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To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director/Chief Prosecutor

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Re: Financial Disclosure Reform

In Rhode Island, public officials have been required to file a yearly Financial Statement since 1977 (covering calendar year 1976). Such statements were required by statutes adopted by the General Assembly and were administered by the Conflict of Interest Commission, the statutory predecessor to the Rhode Island Ethics Commission (RIEC). The 1986 amendment to the Rhode Island Constitution tasked the newly created RIEC with, among other things, adopting provisions relating to financial disclosure and enforcing them. R.I. Const. art. III, sec. 8. The newly formed RIEC continued to enforce the financial disclosure statutes and utilized the same forms that already existed, although from time to time the RIEC adopted regulations to clarify or expand on the statutory requirements.

Financial disclosure is therefore governed both by statutes enacted by the General Assembly and by regulations adopted by the RIEC. The RIEC has also developed certain interpretations of the statutes and regulations through the complaint and advisory opinion process. The result is that to fully understand the financial disclosure requirements and procedures one must look in several places (statutes, regulations, decisions and advisory opinions).

In order to make changes to financial disclosure, it is necessary to make amendments to both statutes (by the legislature) and regulations (by the RIEC). Below is a summary of some proposed amendments to financial disclosure, both statutory and regulatory. The goal is to modernize, simplify and clarify the requirements and procedures by combining complimentary statutes and regulations, repealing duplicative or unnecessary provisions, and adopting new laws that will help achieve better compliance, efficiency, understanding and transparency.

This summary is on the agenda for a general discussion as to how best to move forward to adopt some or all of these changes, and to identify other proposed changes to be implemented as part of financial disclosure reform.

PROPOSED STATUTORY AMENDMENTS

For these proposed amendments, RIEC staff will draft the amended statutes as a package to be known as, perhaps, "The Financial Disclosure Reform Act of 2020." The RIEC Executive Director will work with legislative leadership and its counsel to prepare a proposed bill for the 2020 legislative session. Among those proposed changes are:

1. Definitions. Amend "Definitions" section of statute, § 36-14-2 to clarify meaning of certain terms to be consistent with RIEC's historical interpretation and with its regulations:
 - a. Amend definition of "business" at § 36-14-2(2) to read: "Business" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit or not for profit is conducted, whether for-profit or non-profit, which at times engages in activities in order to generate revenue.
 - b. Amend definition of "State or municipal appointed official" to read: "State or municipal appointed official" means any officer or member of a state or municipal agency as defined herein who is appointed ~~for a term of~~ to an office specified by the constitution or statute of this state or a charter or ordinance of any city or town or who is appointed by, ~~or through~~ or with the advice and consent of the highest governing body or ~~highest~~ official of state or municipal government."
 - c. Amend definition of "Major decision-making position" to read: "Major decision-making position" means the executive or administrative head or heads of a state agency, whether elected or appointed or serving as an employee ~~and all members of the judiciary, both state and municipal.~~ Including, but not limited to, the positions of director, deputy director, assistant director, chief of staff, or their equivalent positions however titled. ~~For state agencies, a "major decision-making position" shall include the positions of deputy director, executive director, assistant director and chief of staff.~~ "Major decision-making position" also means all members of the state judiciary, including court justices, judges and magistrates.
2. Amend Financial Disclosure statute, § 36-14-16, to:
 - a. Clarify in § 36-14-16(a)(5) that municipal judges are among the municipal appointed officials who are required to file a yearly financial statement.
 - b. In § 36-14-16(b), direct candidates for state appointed positions that require Senate confirmation to file a financial statement with the Ethics Commission prior to the confirmation hearing.
 - c. In § 36-14-16(c), clarify that candidates for elective office must file a financial statement within thirty (30) days of filing a formal declaration of candidacy. Current statute simply refers to "the filing deadline."

- d. Clarify, in § 36-14-16(d), that the RIEC may send online filing instructions in lieu of hard copies of blank statements and instructions.
 - e. Extend the filing deadline from 5:00 p.m. on the deadline date to 11:59 p.m., which is more consistent with online filing.
 - f. Clarify, by adding a new subsection to § 36-14-16, that the deadlines for filing may be extended in cases where the RIEC has not received notice of an individual's hiring, appointment or election, until such notice is received and filing instructions have been sent.
 - g. Amend § 36-14-16 to include the provision of current Commission Regulation 520-RICR-00-00-4.2, which specifies that a public official or employee who leaves office has a continuing duty to file a financial disclosure statement the following year.
3. Content of Financial Statement. Repeal § 36-14-17 (Content of Financial Statement) in its entirety, and replace it with a new § 36-14-17 that is clearer, and which includes all the Commission regulations that were enacted over the years to supplement and clarify these statutorily required answers, including:
- a. Occupational Income. Requires disclosure of any entity from which the filer receives \$1,000 or more in gross occupational income. Combines statute section 17(b)(2) with 520-RICR-00-00-4.4 (Occupational Income). No major change in interpretation.
 - b. Real Estate Interest. Combine statute section 17(b)(3) with 520-RICR-00-00-4.6 (Real Estate Interest). Clarify that tax liens are included. Note that real estate interests go beyond a "property interest" and also includes a "financial interest" in real estate.
 - c. Trust Income. Combine statute section 17(b)(5) with 520-RICR-00-00-4.7 (Trust Income) and modify slightly to raise the reporting threshold from trusts that generated income of more than \$1,000 to \$5,000 (or a higher amount in the Commission's discretion).
 - d. Management and Leadership Positions. Combine statute section 17(b)(6) with 520-RICR-00-00-4.5 (Executive Positions); 4.8 (Business Positions); and 4.11 (Leadership Positions with Not-for-profit Organizations). Clarify that these positions include nonprofit organizations that are not purely advisory. Also, discuss whether it is necessary to require disclosure of non-profit organizations for which the person serves as an *unpaid* director or officer.
 - e. Stocks. Stocks are currently reported under the question relating to "Business Interests." Add a stand-alone subsection that deals only with ownership of publicly traded stocks. Consider raising the reporting threshold of this "business interest" from \$5,000 to \$25,000 per company.

- f. Business Interests. Combine statute section 17(b)(7) with 520-RICR-00-00-4.10 (Business Interest). This requires the listing of all business entities of which the filer has a \$5000 or 10%, or greater, interest. Consider raising the threshold from \$5,000 (which has been the threshold since 1977).
 - g. Business with Public Agency. This was previously part of 17(b)(1), requiring disclosure if the official did business with a public agency in an amount over \$250. It should have its own subsection, and the Commission may wish to consider raising the threshold amount of \$250 (which has been the threshold since 1977).
 - h. Business subject to Regulation. This also was previously part of 17(b)(1), requiring disclosure if the official's business was subject to direct regulation by a state or municipal agency. Our instructions note that applicable regulation must be substantial and direct, such as is received by banks and utilities. This question is rarely, if ever, applicable, and frequently leads to confusion. Given that all business interests, regardless of whether they are regulated, are already disclosed under the "Business Interests" question, the Commission should consider deleting this altogether. If not deleted, it should have its own subsection, and it should be clarified to apply only to substantial and ongoing regulation, such as is received by financial institutions and utilities.
 - i. Indebtedness. Rewrite former section (b)(8) for clarity. Consider the following amendments:
 - i. Raise threshold debt amount from \$1,000;
 - ii. Add exceptions for student loans and car loans.
 - iii. Add exception for debts to public agencies that have not been reduced to a judgment or lien.
 - j. Out-of-State Travel. Codify in statute the out-of-state travel disclosure that currently exists only in the Commission's regulations at 520-RICR-00-00-4.12 (Out-of-state travel).
4. Repeal § 36-14-18 (Disclosure of regulated business interests) in its entirety. Do not replace. Section 18 appears to require the filing of an affidavit within 30 days of acquiring or divesting a business interest that either does business with, or is regulated by, a state or municipal agency. Such interests are already disclosed on the yearly financial statement, but section 18 appears to require additional affidavits to be filed throughout the year when these interests are acquired or divested. We have no record of ever requiring, or receiving, such affidavits. It is submitted that requiring such affidavits, in addition to the yearly filing, would be overly burdensome to the 4,000+ annual filers, particularly as to stock holdings that may trade in and out of a person's account throughout the year.

PROPOSED AMENDMENTS TO RIEC REGULATIONS

Some, but not all, of the below proposed regulations are dependent upon passage of the proposed statutory amendments by the General Assembly. It is suggested that all amendments to the RIEC's regulations be prepared and hearings held prior to the statutory changes, but that they only become effective following passage of the statutory amendments by the General Assembly in the 2020 legislative session.

1. Amend 520-RICR-00-00-3.30 (Procedure for Complaints Relating to Financial Disclosure), to achieve the following changes:
 - a. Re-classify Financial Disclosure Complaints. Clarify that Financial Disclosure Complaints are not considered substantive violations of the Code of Ethics.
 - b. Create an Informal Disposition Track. Create an informal disposition track for financial disclosure complaints, whereby the Executive Director is authorized to dismiss a complaint and issue a public "Letter of Education" or "Letter of Reprimand" to a public official who is accused of a delinquent or deficient financial statement. Such letters shall only be issued if the official agrees to become fully compliant and accept the letter. Such letters might only be made available for individuals who have not received such letters in the last several years (3 years, for instance). Respondents always have the option of declining the letter and instead going to a hearing before the Ethics Commission. The Executive Director would be required to report all such letters issued to the Commission at the next meeting. Alternatively, the Commission could require the Executive Director could seek permission from the Commission prior to issuing each such letter. A copy of the letter would also be sent to any Complainant.
2. Repeal unnecessary or duplicative financial disclosure regulations. Repeal regulations that have been added to the Rhode Island General Laws through the proposed statutory amendments in the 2020 legislative session, including:
 - a. 520-RICR-00-00-4.3 Commission Mailings (36-14-16001), to be inserted into R.I. Gen. Laws § 36-14-16(h).
 - b. 520-RICR-00-00-4.2 Continuing Duty to File a Financial Statement After Leaving Office (36-14-16004), to be inserted into R.I. Gen. Laws § 36-14-16(i).
 - c. 520-RICR-00-00-4.4 Occupational Income (36-14-17001), to be inserted into R.I. Gen. Laws § 36-14-17(b)(1).
 - d. 520-RICR-00-00-4.5 Executive Positions (36-14-17002), to be inserted into R.I. Gen. Laws § 36-14-17(b)(4).
 - e. 520-RICR-00-00-4.6 Real Estate Interest (36-14-17003), to be inserted into R.I. Gen. Laws § 36-14-17(b)(2).

- f. 520-RICR-00-00-4.7 Trust Income (36-14-17004), to be inserted into R.I. Gen. Laws § 36-14-17(b)(3).
- g. 520-RICR-00-00-4.8 Business Positions (36-14-17005), to be inserted into R.I. Gen. Laws § 36-14-17(b)(4).
- h. 520-RICR-00-00-4.9 Doing Business with a State or Municipal Agency (36-14-17006), to be inserted into R.I. Gen. Laws § 36-14-17(b)(7).
- i. 520-RICR-00-00-4.10 Business Interest (36-14-17007), to be inserted into R.I. Gen. Laws § 36-14-17(b)(5).
- j. 520-RICR-00-00-4.11 Leadership Positions with Not-For-Profit Organizations (36-14-17008), to be inserted into R.I. Gen. Laws § 36-14-17(b)(4).
- k. 520-RICR-00-00-4.12(a) Out-of-State Travel (36-14-17009). Only subsection (a) would be repealed and put into the statute at R.I. Gen. Laws § 36-14-17(b)(10). Subsection (b) of the regulation, which sets forth circumstances indicating that a person or entity would not have provided the travel but for the official's public office, will remain in the regulation guidance for the Commission.